

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORNELL LAMONT GLENN,

Defendant-Appellant.

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UNPUBLISHED

August 1, 2000

No. 210800

Genesee Circuit Court

LC No. 97-000878-FC

Before: Hood, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from a jury trial conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to twelve to thirty years' imprisonment. We affirm.

I

Defendant first argues that the trial court abused its discretion in failing to declare a mistrial because of jury deadlock. A trial court exercises its discretion when deciding a motion for mistrial based on jury deadlock. See *Arizona v Washington*, 434 US 497, 509-510; 98 S Ct 824; 54 L Ed 2d 717 (1978); *People v Harvey*, 121 Mich App 681, 689; 329 NW2d 456 (1982). An abuse of discretion exists when the court's decision is so grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and the exercise of passion or bias. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

In dicta, the United States Supreme Court has recognized a trial court's discretion in deciding whether a jury's inability to reach a verdict should result in a mistrial:

Moreover, in this situation there are especially compelling reasons for allowing the trial judge to exercise broad discretion in deciding whether or not "manifest necessity" justifies a discharge of the jury. On the one hand, if he discharges the jury when further deliberations may produce a fair verdict, the defendant is deprived of his "valued right to have his trial completed by a particular tribunal." But if he fails to

discharge a jury which is unable to reach a verdict after protracted and exhausting deliberations, there exists a significant risk that *a verdict may result from pressures inherent in the situation rather than the considered judgment of all the jurors*. If retrial of the defendant were barred whenever an appellate court views the “necessity” for a mistrial differently from the trial judge, there would be a danger that the latter, cognizant of the serious societal consequences of an erroneous ruling, would employ coercive means to break the apparent deadlock. Such a rule would frustrate the public interest in just judgments. [*Washington, supra*, 434 US at 509-510, emphasis added.]

After reviewing the entire record, we are unable to conclude that the trial court’s decision to request further deliberation after giving the deadlock instruction was so grossly violative of fact and logic that it evidenced a perversity of will, defiance of judgment, or the exercise of passion or bias. It is possible that the trial court reasonably believed that the jury would be able to reach a verdict after hearing the deadlock instruction and discussing the case another time. Furthermore, the fact that the jury then requested to hear one of the complainant’s testimony again and deliberated for approximately five more hours before reaching a verdict is evidence that the verdict was not the result of the pressures inherent in the situation. See *id.* Therefore, the court’s decision was not an abuse of discretion.

## II

Defendant next argues that the trial court plainly erred in instructing the jury that defendant’s prior convictions could be used only for credibility purposes. Defendant waived review of the jury instructions by failing to object at trial. *People v Snider*, 239 Mich App 393, 420; 608 NW2d 502 (2000). This Court reviews unpreserved claims of constitutional error for plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 761-764, 774; 597 NW2d 130 (1999). A “reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 774.

In this case, there was no plain error that affected defendant’s rights. The trial court’s instructions to the jury, when read in their entirety, fairly presented the issues to be tried and sufficiently protected defendant’s rights. See *People v Whitney*, 228 Mich App 230, 252-253; 578 NW2d 329 (1998). It appears from the record that defendant testified to his prior criminal record for both credibility purposes and to establish an alibi. While prior convictions are relevant to credibility, the length and duration of the sentences involved with the prior convictions are not relevant to credibility. See *People v Lindberg*, 162 Mich App 226, 234; 412 NW2d 272 (1987). Thus, the trial court properly instructed the jury that it could consider defendant’s convictions for credibility purposes only. Defendant attempted to establish an alibi through his period of incarceration, and not through his prior convictions, because although the incarceration was not relevant to credibility it was relevant to defendant’s alibi. Thus, the court also properly gave an alibi instruction to the jury.

Affirmed.

/s/ Harold Hood  
/s/ David H. Sawyer  
/s/ Mark J. Cavanagh